



BILLING CODE: 3510-DS-P

DEPARTMENT OF COMMERCE

International Trade Administration

[A-570-904]

Certain Activated Carbon from the People's Republic of China: Notice of Court Decision Not in Harmony With Final Results of Administrative Review and Notice of Amended Final Results of Antidumping Duty Administrative Review; 2009-2010

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: On November 24, 2014, the United States Court of International Trade (“the Court”) issued final judgment in Albemarle Corp. et al. v. United States, Consol. Court No. 11-00451, sustaining the Department of Commerce’s (“the Department”) final results of redetermination pursuant to remand (“Remand”).¹ In the Remand, the Department recalculated the weighted-average dumping margin for Calgon Carbon (Tianjin) Co., Ltd.’s (“Calgon Tianjin”) using revised surrogate values for coal and fine by-products.² The Department also recalculated in the Remand the dumping margin for three respondents not selected for individual examination (*i.e.*, the separate rate) – Ningxia Guanghua Cherishmet Activated Carbon Co., Ltd. (“Ningxia Guanghua”) and its affiliate Beijing Pacific Activated Carbon Products Co., Ltd. (“Beijing Pacific”) (together, “Cherishmet”),³ as well as Shanxi DMD Corporation (“Shanxi DMD”).⁴

¹ See Final Results Of Redetermination Pursuant To Court Remand, Consol. Court No. 11-00451, Slip Op. 13-106 (CIT August 15, 2013), dated January 9, 2014, available at <http://enforcement.trade.gov/remands/13-106.pdf>.

² *Id.* at 8-10. As we explain below, the Department’s recalculation of these surrogate values continued to yield a *de minimis* weighted-average dumping margin for Calgon Tianjin. Thus, consistent with our practice, the Department has not amended the final results with respect to Calgon Tianjin.

³ The Department found Ningxia Guanghua and Beijing Pacific to be affiliated and a single entity in First Administrative Review of Certain Activated Carbon from the People’s Republic of China: Final Results of Antidumping Duty Administrative Review, 74 FR 57995, 57998 (November 10, 2009).

⁴ See Remand at 10-13.

Consistent with the decision of the United States Court of Appeals for the Federal Circuit (“CAFC”) in Timken Co. v. United States, 893 F.2d 337 (Fed. Cir. 1990) (“Timken”), as clarified by Diamond Sawblades Mfrs. Coalition v. United States, 626 F.3d 1374 (Fed. Cir. 2010), the Department is notifying the public that the final judgment in this case is not in harmony with the Department’s final results of the antidumping duty administrative review of the antidumping duty order on certain activated carbon from the People’s Republic of China (“PRC”) covering the period of review (“POR”) April 1, 2009, through March 31, 2010, and is amending the final results with respect to the weighted-average dumping margins assigned to Ningxia Guanghua, Beijing Pacific, and Shanxi DMD.⁵

DATES: Effective Date: December 4, 2014.

FOR FURTHER INFORMATION CONTACT: Robert Palmer, AD/CVD Operations Office V, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC, 20230; telephone: (202) 482-9068.

SUPPLEMENTARY INFORMATION:

Background

On October 31, 2011, the Department issued AR3 Final Results.⁶ Cherishmet and Shanxi DMD, exporters of subject merchandise, timely filed complaints with the Court. Albemarle Corporation (“Albemarle”), a U.S. importer of subject merchandise, and Ningxia Huahui Activated Carbon Co., Ltd. (“Huahui”), an exporter of subject merchandise, also timely filed a complaint with the Court. Together, these parties challenged four aspects of the Department’s

⁵ See Certain Activated Carbon from the People’s Republic of China: Final Results and Partial Rescission of Third Antidumping Duty Administrative Review, 76 FR 67142 (October 31, 2011) (“AR3 Final Results”) and the accompanying Issues and Decision Memorandum.

⁶ Id.

final results: (1) The surrogate value for Calgon Tianjin's carbonized material; (2) the surrogate values for Calgon Tianjin's coal and fine by-products; (3) the dumping margins assigned to Huahui, Shanxi DMD, Ningxia Guanghua, and Beijing Pacific, which were not selected for individual examination in the review; and (4) the use of a per-unit assessment rate for Shanxi DMD's entries. On August 15, 2013, the Court remanded the Department's AR3 Final Results and instructed the Department to reconsider each of these issues.⁷

On January 9, 2014, the Department filed the Remand with the Court. First, the Department continued to calculate Calgon Tianjin's surrogate value for carbonized material with the same data that it used in AR3 Final Results.⁸ Second, the Department recalculated Calgon Tianjin's surrogate values for coal and fine by-products by capping those values at the value assigned to their main input, carbonized material.⁹ The Department's recalculation of the by-products surrogate values continued to yield a de minimis weighted-average dumping margin for Calgon Tianjin.¹⁰ Third, and under protest, the Department averaged the zero and de minimis rates calculated for the two mandatory respondents in this administrative review (*i.e.*, Jacobi Carbons AB and Calgon Tianjin) and assigned the resulting zero dumping margin to Ningxia Guanghua, Beijing Pacific, and Shanxi DMD.¹¹ Finally, the Department determined that the issue concerning the use of a per-unit assessment rate for Shanxi DMD's entries was moot, given that the Department assigned Shanxi DMD a dumping margin of zero.¹² On November 24, 2014,

⁷ See Albemarle Corp. v. United States, 931 F. Supp. 2d 1280 (CIT 2013). The Court reserved judgment on the dumping margin assigned to Huahui, which was different from the margin that the Department assigned to Shanxi DMD, Ningxia Guanghua, and Beijing Pacific. Id. It explained that the Department could, but was not required to, reconsider Huahui's margin on remand. Id.

⁸ See Remand at 3-8.

⁹ Id. at 10.

¹⁰ Id.

¹¹ Id. at 10-13. The Department did not change the dumping margin assigned to Huahui. Id. at 22.

¹² Id. at 13-15.

the Court entered judgment sustaining the Remand.¹³

Timken Notice

In its decision in Timken, 893 F.2d at 341, as clarified by Diamond Sawblades, the CAFC held that, pursuant to section 516A(e) of the Tariff Act of 1930, as amended (“the Act”), the Department must publish a notice of a court decision that is not “in harmony” with a Department determination and must suspend liquidation of entries pending a “conclusive” court decision. The Court’s November 24, 2014, judgment sustaining the Remand constitutes a final decision of the Court that is not in harmony with the Department’s AR3 Final Results. This notice is published in fulfillment of the publication requirement of Timken.

Amended Final Results

Because there is now a final court decision, the Department amends AR3 Final Results with respect to Cherishmet and Shanxi DMD. The revised weighted-average dumping margins for these exporters during the period April 1, 2009, through March 31, 2010, follow:

Exporter Name	Weighted Average Dumping Margin (Dollars Per Kilogram)
Ningxia Guanghua Cherishmet Activated Carbon Co., Ltd. ¹⁴	0.00
Shanxi DMD Corporation	0.00

Accordingly, the Department will continue the suspension of liquidation of the subject merchandise pending the expiration of the period of appeal or, if appealed, pending a final and conclusive court decision. In the event the Court’s ruling is not appealed or, if appealed, upheld by the CAFC, the Department will instruct U.S. Customs and Border Protection to assess antidumping duties on unliquidated entries of subject merchandise exported by Cherishmet and

¹³ See Albemarle Corp. et al. v. United States, Consol. Court No. 11-00451 (CIT November 24, 2014).

¹⁴ This dumping margin also applies to Beijing Pacific. See supra note 3.

Shanxi DMD using the assessment rate calculated by the Department in the Remand and listed above.

Cash Deposit Requirements

The cash deposit rate for Cherishmet will remain the respondent-specific rate established for the subsequent and most-recent period during which the respondent was reviewed, which is \$0.04 per kilogram.¹⁵ The cash deposit rate for the PRC-wide rate, which now includes Shanxi DMD, will remain the PRC-wide entity rate established for the subsequent and most-recent period during which the PRC-wide entity was reviewed, which is 2.42 U.S. dollars per kilogram.¹⁶

Notification to Interested Parties

This notice is issued and published in accordance with sections 516A(e), 751(a)(1), and 777(i)(1) of the Act.

Paul Piquado,
Assistant Secretary
for Enforcement and Compliance.

Dated:
December 1, 2014.

[FR Doc. 2014-28577 Filed 12/04/2014 at 8:45 am; Publication Date: 12/05/2014]

¹⁵ See Certain Activated Carbon From the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2012-2013, 79 FR 70163, 70165 (November 25, 2014).

¹⁶ Id.